

1 (The jury is present.)

2 THE COURT: Cross-examination.

3

4 CROSS-EXAMINATION

5 BY MR. ROBERTSON:

6 Q Good morning, Mr. Momyer.

7 A Good morning.

8 MR. ROBERTSON: I'd like you to put the '683

9 patent up, Exhibit No. 1, specifically column 1

10 starting at line 10 going down to about line 17.

11 Q You recognize this as the '683 patent, you're

12 patent?

13 A Yes.

14 Q I'm sorry?

15 A Yes.

16 Q Did you disclose in your patent and the Patent

17 Office that there were a number of known --

18 THE COURT: Can you speak up, please.

19 MR. ROBERTSON: Sure, Your Honor. I'm sorry.

20 Q Did you disclose to the Patent Office in your

21 patent that there are a number of known

22 requisition/purchasing systems that manage and process

23 requisitions and purchase orders, one such system is

24 the Fisher-Scientific Requisition and Inventory

25 Management System, Fisher RIMS, described in United

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2129

1 States No. 5,712,989 filed April 2, 1993, and assigned
2 to the Fisher-Scientific Company of Pittsburgh,
3 Pennsylvania, the disclosure of which is incorporated
4 herein by reference; do you see that?

5 A Yes, I do.

6 Q Did you make that representation to the Patent
7 Office?

8 A Yes.

9 Q Why did you do that, sir?

10 A Well, RIMS was an inventory control purchasing
11 requisition system, and we actually would use the
12 basis for RIMS to build the component for the
13 electronic sourcing application.

14 Q So did you want them to be aware that such a
15 system existed out there?

16 A Yes.

17 Q Can you go down to about line 35? Just the first
18 two lines. There's a statement in your patent that
19 says, Other requisition/purchasing systems can be
20 grouped broadly into four classes; do you see that?

21 A Yes.

22 Q Just generally, if you would just refer to your
23 patent, did you go on to describe for the Patent
24 Office what those four classes of requisition
25 purchasing systems were?

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2130

1 A Yes. We did describe some other types of
2 requisition purchasing systems.

3 Q If you would go down to line 60, down to about
4 line 64. You then represented to the Patent Office
5 that none of these known requisition/purchasing
6 systems, including Fisher RIMS, however, provides a
7 capability for a user readily to search for and locate
8 information about the products that may be
9 requisitioned and ordered in connection with the
10 requisition/purchasing system; do you see that?

11 A Yes.

12 Q When you made that statement to the Patent Office,
13 did you consider it to be truthful?

14 A Yes.

15 Q Do you consider it to be truthful to this day?

16 A Yes.

17 Q You were also asked about the ability for a user
18 to request information about products and create
19 orders that can be saved, printed or, in some cases,
20 facsimiled directly to a vendor; do you recall that?

21 A Yes, I did.

22 Q When you print or facsimile directly to a vendor,
23 are you working within the electronic sourcing system
24 patent that you've described and claimed in your
25 patents?

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2131

1 A No.

2 Q Why don't we look at right underneath where that
3 was cited to you in the patent, starts at line 9, the
4 known computer systems, going down to about the end of
5 that first full paragraph. It says, Sourcing
6 operation. I'm sorry. Column 2, starting about line
7 8.

8 MR. ROBERTSON: I want to start where it
9 says, The known computer systems. If we could just
10 include a little bit above it. Why don't you do the
11 whole paragraph. Thank you, Mike.

12 BY MR. ROBERTSON:

13 Q So you see here where the reference was made to
14 systems that can search for user requested information
15 and then save, print or, in some cases, facsimile
16 those orders directly to a vendor?

17 A Yes, I see that.

18 Q That was what Mr. McDonald was asking you about,
19 right?

20 A That's correct.

21 Q After that it says, The known computer systems for
22 searching vendor catalogs are limited and that only
23 one such vendor catalog is accessible to a user at any
24 given time. They are also limited in that they can
25 only create an order within the particular vendor

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2132

1 catalog database. They cannot source items to be
2 requisitioned from a database containing multiple
3 catalogs or interact with a requisition/purchasing
4 system such as Fisher RIMS to create a purchase order
5 or orders including the items located from that
6 sourcing operation. Did I read that correctly?

7 A Yes.

8 Q Was that a truthful statement when you made it to
9 the Patent Office when you filed this application in
10 August of 1994?

11 A Yes.

12 Q Do you still consider it to be truthful to this
13 day?

14 A Yes.

15 Q You go on to identify a number of advantages that
16 you consider for your electronic sourcing system.
17 I'll just ask you to just briefly scan down the next
18 few paragraphs there. It should be in PX 1.

19 Maybe I can just blow it up on the screen and we
20 can do it.

21 A I've got it.

22 THE COURT: It's about midway through
23 Volume I.

24 A What column is it in?

25 Q Column 2, starting at about line 18, I think the

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2133

1 first paragraph says, Thus --

2 A Yes, I see it.

3 Q Let me just paraphrase rather than read it.

4 Do you agree or disagree that it's desirable for
5 your electronic sourcing system to provide means for
6 transferring information between requisition and
7 purchasing systems that may use results of a search of
8 product information, search large volumes of product
9 information such that it would be included in vendor
10 product catalogs or catalogs?

11 A Yes.

12 Q Was that one of the advantages that you considered
13 for your invention?

14 A Yes, it was.

15 Q Did you also agree that for your electronic
16 sourcing system, it would be desirable to have a
17 capability of searching a database containing at least
18 two product catalogs for product information? Is that
19 one of the advantages you thought was presented by
20 your invention?

21 A Yes.

22 Q Was that an advantages over the RIMS system?

23 A Yes.

24 Q Why is that?

25 A RIMS didn't really even have a catalog in it.

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2134

1 Q You were asked about whether or not you would
2 consider RIMS to have a catalog. And I forget your
3 answer. What was it?

4 MR. McDONALD: Objection, Your Honor.

5 Q Let me rephrase the question. Are you familiar
6 with the term "parts list"?

7 A Yes.

8 Q What's a parts list?

9 A It's pretty self-explanatory. It's a list of
10 parts.

11 Q What kind of information with respect to the
12 products was contained in the RIMS database?

13 A Primarily product number, description, unit of
14 measure, and some stock-keeping information.

15 Q What do you understand a parts list to contain?

16 A Pretty much that.

17 Q All right. Let me ask you about another advantage
18 of your system. The next paragraph says, and I'm
19 paraphrasing. Let me ask you, would it be desirable
20 for an electronic sourcing system to be capable of
21 searching a database of catalog items containing
22 vendor product catalogs, selecting particular items
23 located, and transferring that item information, for
24 example, a catalog number, a vendor identifier such as
25 a vendor name or vendor number to a requisition

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2135

1 purchasing system for inclusion in a requisition
2 generated by the system? Would you consider that to
3 be an advantage of your invention?

4 A Yes, I would.

5 Q Did the RIMS system have that capability?

6 A No, it did not.

7 Q You also represented to the Patent Office that it
8 would be further desirable to provide an electronic
9 sourcing system that's capable of creating an order
10 list including items located as the result of a
11 catalog database search, and then transferring that
12 order list of desired items to a requisitioning and
13 purchasing system for inclusion of the catalog items
14 as entries in a requisition generated by the system.
15 Do you see that?

16 A Yes.

17 Q Did you consider that to be an advantage at the
18 time when you applied for your patent?

19 A Yes.

20 Q Do you consider that to be the same or different
21 from the capability of the RIMS system?

22 A Well, RIMS, obviously, didn't have a catalog. So
23 it really couldn't pull results of a search back into
24 an order list. So, yes, it's something that RIMS did
25 not have.

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2136

1 Q Did you consider one of the advantages of your
2 invention to be that it could generate multiple
3 purchase orders for multiple vendors from a single
4 requisition?

5 A Yes, I do.

6 Q Did the RIMS system have that capability?

7 A No.

8 Q Was there any means for selecting product catalogs
9 to search disclosed in the RIMS '989 patent?

10 A No.

11 Q You were ask some questions about how many
12 versions the RIMS system went through when it was
13 being used by the customer service representatives.
14 Do you know as you sit here today how many versions
15 there were?

16 A No, I can't say. There are quite a few.

17 Q Can you give us give your best estimate?

18 A Thirty, 40 versions.

19 Q You were directed to your deposition with respect
20 to when the RIMS development wrapped up. Do you
21 recall that?

22 A Yes.

23 Q And at the time you indicated, I thought I
24 understood, you wanted to follow-up on your answer
25 with respect to that when you were directed to your

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2137

1 testimony.

2 A Yes.

3 Q Can you tell us what was it that you had in mind?

4 A All right. Okay. What I was addressing, that was
5 in an earlier deposition, was that the first release
6 of RIMS was wrapped up around 1991. There were many
7 subsequent releases of RIMS that occurred after that
8 up until I left Fisher in 2003. We continually
9 modified and upgraded the RIMS system.

10 Q Do you have a memory specifically in that
11 deposition as to whether or not you were asked a
12 question as to the ongoing development of the Fisher
13 RIMS system?

14 A I really don't recall.

15 Q Why don't you then go to page 99 of that
16 deposition transcript. That was the --

17 MR. McDONALD: Objection, Your Honor. He
18 just said he doesn't recall.

19 MR. ROBERTSON: I'm going to fresh his
20 recollection.

21 THE COURT: Overruled.

22 Q Can you go to the September 16, 2004 deposition
23 you have in your book?

24 A All right.

25 Q Specifically, if you'd go to the bottom of page 99

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2138

1 starting at about line 20. If you could read over to
2 the top of page 100.

3 A Page --

4 Q 99 starting at line 20 at the bottom.

5 A Okay.

6 Q And going over.

7 A Sorry, Mr. Robertson. I'm having trouble with the
8 page. 93, 94 to 97, 98 to what?

9 MR. ROBERTSON: 99, starting at line 20. It
10 says, Question: Welcome back.

11 A 99, line 20, yes, I see that.

12 Q Why don't you read that over to page 100 down
13 through line 9. Just read it to yourself, sir.

14 A How far did you want me to read?

15 Q Down to line 9.

16 A Okay.

17 Q Now, you were asked a question concerning when the
18 RIMS product was complete. Do you see that shortly
19 after the luncheon break?

20 A Yes.

21 Q Does that refresh your recollection now as to what
22 you told the attorney under oath in your testimony as
23 to when the RIMS system was completed?

24 A Yes.

25 Q What does it refresh your recollection to be and

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2139

1 what did you indicate there?

2 A Pretty much what I just said. We continue
3 developing RIMS up until I left Fisher.

4 MR. McDONALD: Your Honor, I don't know what
5 he's referring to at this point, but I think the
6 question and answer should just be red.

7 MR. ROBERTSON: I'm happy to do that, Your
8 Honor.

9 THE COURT: He asked if it refreshed his
10 recollection, and he said yes. What was the
11 recollection that was refreshed? He's entitled to
12 answer how it was refreshed. And if you'd like to
13 read the question and answer, both of you, go ahead.

14 BY MR. ROBERTSON:

15 Q Well, I thought you had answered the question, but
16 I understood you to say it refreshed your
17 recollection. So what recollection was refreshed by
18 referring to this testimony that you gave under oath?

19 A My recollection was that the RIMS system was an
20 evolutionary system that continued to be developed
21 over a period of time up to and through 2000, 2003.

22 Q Is it your testimony there under oath consistent
23 with your recollection now?

24 A Yes.

25 Q Can we just go to the RIMS patent? The RIMS

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2140

1 system is mentioned multiple times in your patent; is
2 that right?

3 A Yes, it is.

4 Q I've got just a graphic here of your '683 patent.
5 If we could just go along. Do you know how many times
6 RIMS is mentioned in this patent?

7 A No, I don't.

8 Q I've indicated here in red in each instance that
9 the RIMS system or the RIMS features or capabilities
10 are described or as modified. If we could just scan
11 through this. This is column 1 and 2, there's 3 and
12 4, 5 and 6, 7 and 8, 10, columns 11 and 12, 13, 14,
13 15, 16, 18. All right. Would it surprise you, sir,
14 if you disclosed RIMS functionality and feature in
15 your patent more than 55 times in your patent
16 application?

17 A No.

18 Q You weren't trying to mislead the Patent Office by
19 withholding descriptions of what the RIMS capability
20 was, were you?

21 A No, I wasn't.

22 Q Can you tell us whether or not you think you fully
23 disclosed the features and capability and the
24 revisions and modifications that were necessary in
25 order to come up with your electronic sourcing

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2141

1 invention?

2 A Yes, to the best of my understanding we did.

3 Q I want to talk to you a little bit about
4 cross-referencing in the RIMS system. Do you recall
5 being directed to sections in the RIMS patent?

6 A Yes, I do.

7 Q In your electronic -- well, let me ask you this
8 basic question. Is the cross-referencing, as
9 identified in the RIMS patent, the same
10 cross-referencing as utilized in your invention of the
11 electronic sourcing system?

12 A No, it's not.

13 Q Can you tell us how it's different?

14 A The cross reference in the RIMS system was
15 intended to be a means to do a look-up from a
16 competitor or vendor's catalog number, part number,
17 over to Fisher, and always convert it to that. The
18 cross referencing in the electronic sourcing was much
19 broader in that it didn't specifically cross reference
20 you to any specific Fisher part number. It wasn't
21 tied back to a specific Fisher part number.

22 Q Let me ask you this about the RIMS system. If you
23 were able to identify a part number, for example, of
24 your competitor, was the RIMS system then able to
25 source it from that vendor?

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2142

1 A In the RIMS system?

2 Q Yes.

3 A It would identify the part number. Which part
4 number?

5 Q The part number of the competitor.

6 A No, it would always -- in the RIMS system, you
7 would always translate back to the Fisher part number.

8 Q So in other words, you were trying to cross
9 reference to a part number so you could then find a
10 corresponding Fisher product to sell to the customer;
11 is that right?

12 A That's correct.

13 Q In your electronic sourcing system, does the
14 customer, the user, have the ability using the cross
15 reference table to purchase the actual item from one
16 vendor, another vendor, or multiple vendors?

17 MR. McDONALD: Objection, Your Honor. The
18 cross-reference table was a term that the Court has
19 used in its claim constructions, and I think it's
20 unclear here because there's nothing in that
21 definition that is specific to which part it's being
22 converted to.

23 MR. ROBERTSON: I'll rephrase the question.

24 Q Did the electronic sourcing system have the
25 capability to identify the same or similar products

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2143

1 from multiple vendors, your invention?

2 A Yes.

3 Q Could you then source it from those multiple
4 vendors?

5 A Yes.

6 Q Could you then purchase it from those multiple
7 vendors?

8 A Yes.

9 Q Did the RIMS system have that capability at any
10 time, way, shape or form?

11 A No.

12 Q Did you consider that to be one of the advantages
13 of your electronic sourcing invention?

14 A Yes.

15 Q Can we go to I think it's Plaintiff's Exhibit
16 No. 10, which is the '989 patent. It's at the very
17 back of Volume II, Mr. Momyer.

18 A Okay.

19 MR. ROBERTSON: If you could blow up the --
20 we're going to the page that ends with 910.

21 Q The lower right-hand corner, the lowest number
22 there.

23 A Right. Okay.

24 Q There's a table there that you were asked some
25 questions about --

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2144

1 MR. ROBERTSON: If you could put them
2 together, please.

3 Q -- about 05 and 06 product types. Do you see
4 that?

5 A Yes.

6 Q This customer owned item located in customer
7 warehouse at or near customer site.

8 A Yes.

9 Q Tracking that item in the inventory of the
10 customer, is that a service that Fisher was providing
11 for its customers?

12 A Yes, it was.

13 Q Using the RIMS system, could I use that product
14 type to, within the system, order product from a third
15 party vendor?

16 A No.

17 Q Is there any type 7 product identified in that
18 table?

19 A No, there's not.

20 Q Was there a product type 7 in your electronic
21 sourcing patent?

22 MR. McDONALD: Objection, Your Honor. It's
23 outside the scope of direct and also the claims have
24 nothing to do with the product type 07.

25 MR. ROBERTSON: Your Honor, the question was

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2145

1 asked about product type 05, 06. I want to now point
2 out that product type 07 in this electronic sourcing
3 patent is third party vendor items that are part of
4 the system differentiating the RIMS patent, which he
5 was asked questions about in the electronic sourcing
6 patent.

7 MR. McDONALD: It's not in the claim, Your
8 Honor. That's why we object to it.

9 MR. ROBERTSON: Multiple catalogs are in the
10 claims, Your Honor, and there were multiple vendor
11 catalogs, vendors, supplier, manufacturer. And that's
12 what type 07 products are.

13 MR. McDONALD: That's not what type 07
14 products are.

15 THE COURT: I tell you what, why don't you
16 ask him, and on redirect you can deal with it.

17 What are type 07 products, Mr. --

18 MR. ROBERTSON: Let me just so if I can find
19 it so we can reference.

20 BY MR. ROBERTSON:

21 Q If we can go to appendix 1 of the '683 patent?

22 THE COURT: Figure 1?

23 MR. ROBERTSON: Appendix 1, Your Honor. Let
24 me direct you to that.

25 Q It's on the page that has column 19. Do you see

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2146

1 in there this is a requisition header?

2 A Yes.

3 Q In the lower left-hand side there's a reference to
4 vendor. Do you see that?

5 A Yes.

6 Q The Fisher RIMS System didn't have that vendor as
7 part of a requisition system; is that right?

8 A That's correct.

9 Q Can we go back to that Fisher RIMS patent at table
10 1, column 37? It was PX 10. Table 1 there in the
11 RIMS patent, PX 10, is an order header information.
12 Are you with me?

13 A Yes.

14 Q Is a vendor identified anywhere in that order
15 header information for that requisition?

16 A In table 1?

17 Q Yes.

18 A No.

19 Q You'd agree with me by the time that you were
20 applying for this -- let me ask you this. But when
21 you were applying for the patent application that led
22 to the patents that are at issue here in August of
23 1994, there was a RIMS system in operation, correct?

24 A Yes.

25 Q Notwithstanding that, did Fisher devote

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2147

1 significant resources to develop the electronic
2 sourcing system?

3 A Yes.

4 Q Did they devote personnel to it?

5 A Yes.

6 Q Including yourself, Mr. Kinross, Mr. Johnson and
7 Mr. Melly?

8 A Yes.

9 Q Did they devote considerable financial resources
10 to developing the electronic sourcing system?

11 A Yes.

12 Q Did they subcontract with IBM and pay them a
13 considerable amount of money to work with you for more
14 than a year and a half to develop the electronic
15 sourcing system?

16 MR. McDONALD: Objection, Your Honor. It's
17 related to commercial embodiment, not the scope of the
18 claims and the filing. So it's irrelevant.

19 MR. ROBERTSON: It's part of the invention
20 story. It's part of the development of this
21 invention.

22 THE COURT: Sustained.

23 Q Let me ask you this. If the RIMS patent could do
24 everything that the electronic sourcing patent could
25 do, why would the company go and expend that effort to

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2148

1 come up with this new patent and apply for patent and
2 pay all that money if that was the case to get a
3 patent from the Patent Office?

4 MR. McDONALD: Objection. Lack of
5 foundation.

6 THE COURT: Overruled.

7 A I don't know why it would invest that if RIMS
8 could do all of that.

9 MR. ROBERTSON: Thank you. I have no further
10 questions.

11 THE COURT: Redirect?

12 MR. McDONALD: Yes, please.

13

14 REDIRECT EXAMINATION

15 BY MR. McDONALD:

16 Q If we could go back to the '683 patent, please,
17 Exhibit 1. Go back to column 2.

18 THE COURT: He needs to get the book first.

19 A Which column?

20 Q Column 2.

21 A Okay.

22 Q Now, in column 2 --

23 MR. McDONALD: Could we put that up on the
24 screen? We have to have switch the systems, I guess.
25 If we could blow up column 2.

MOMYER - REDIRECT

2149

1 BY MR. McDONALD:

2 Q You were asked some questions in this area by
3 Mr. Robertson. I just want to clarify. You were
4 saying that all these statements in this column were
5 truthful in your belief, correct?

6 A Yes.

7 Q If we go to line 18 there, beginning with the
8 known. Excuse me, line 8. I'm sorry. Line 8,
9 beginning with the sentence, "The known computer
10 systems for searching vendor catalogs are limited in
11 that only one such vendor catalog is accessible to a
12 user at any given time." Do you see that sentence?

13 A Yes.

14 Q Wasn't it true that the TV/2 system was a known
15 computer system for searching vendor catalogs that
16 wasn't limited to just searching one vendor catalog at
17 a given time?

18 MR. ROBERTSON: Objection, lacks foundation.

19 THE COURT: Overruled.

20 A I thought I mentioned I didn't believe that the
21 TV/2, one, could search multiple documents and, two,
22 when it was presented to us had the ability to search
23 a catalog.

24 Q You didn't think TV/2 could search a catalog?

25 A No.

MOMYER - REDIRECT

2150

1 MR. ROBERTSON: Objection.

2 MR. McDONALD: I'll rephrase that.

3 Q It was your understanding when you started working
4 with IBM that the TV/2 system could not search a
5 catalog?

6 A Search a document.

7 Q That's a different question, Mr. Momyer. My
8 question is when you started working with IBM, didn't
9 you know that the TV/2 system was fully capable of
10 searching catalogs?

11 A No, not to the requirements that we needed it to.

12 Q You knew it could search catalogs, though, right?

13 A It could search a document. If you want to
14 consider a catalog a document, then --

15 Q Wasn't that exactly the sort of document that the
16 TV/2 system was designed to work with was a catalog?

17 A That's not what was presented to us.

18 Q Do you remember -- did IBM ever communicate to you
19 in your experience that the TV/2 system was actually
20 designed to work with documents specifically including
21 parts catalogs?

22 A We actually went there with the intent of -- that
23 that was a requirement for us to be able --

24 Q I have a different question for you. My question
25 is: Did IBM, anybody from IBM, ever communicate to

MOMYER - REDIRECT

2151

1 you that the TV/2 system was capable of searching
2 parts catalogs?

3 A I'm sure it came up during the discussions when I
4 was at the meeting as far as being able to search a
5 document, a list of products, and find some keywords,
6 find some products.

7 Q In fact, isn't it true that the TV/2 system was
8 specifically designed to work with a CD ROM that could
9 have multiple catalogs on it?

10 A I don't recall that.

11 Q All right. So when you said this statement here
12 was truthful, you're saying basically as far as you
13 know without really knowing the details about the TV/2
14 system, is that what meant by that?

15 MR. ROBERTSON: I object to the form of that
16 question.

17 THE COURT: Sustained.

18 BY MR. McDONALD:

19 Q Let's go to the next sentence. They are also
20 limited in that they can only create an order within
21 the particular vendor catalog database. Do you see
22 that sentence?

23 A Yes.

24 Q Did you understand, was there any limitation on
25 the TV/2's system ability to communicate with the RIMS

MOMYER - REDIRECT

2152

1 system regarding multiple catalogs from multiple
2 vendors?

3 A Well, my understanding, I didn't think the TV/2
4 system as it was presented to us could handle multiple
5 catalogs and could not search multiple catalogs. That
6 was my understanding. That's the reason we did the
7 development that we did.

8 Q In the next sentence then, do you see where it
9 says, They cannot source items to be requisitioned
10 from a database containing multiple catalogs, which is
11 what we have already been talking about, or interact
12 with a requisition purchasing system, such as Fisher
13 RIMS, to create a purchase order or orders including
14 the items located from that sourcing operation? Do
15 you see that part of the sentence beginning with the
16 word "interact," Mr. Momyer?

17 A Yes, I do.

18 Q Wasn't it true that when Fisher started working
19 with IBM, the TV/2 system was already capable of
20 interacting with a requisition purchasing system such
21 as the Fisher RIMS System to create a purchase order
22 or orders including the items located from that
23 sourcing operation?

24 A Once again, I'm probably not the best person to
25 ask this because I don't recall that being brought up.

MOMYER - REDIRECT

2153

1 I really don't.

2 Q You do recall that the TV/2 system was designed to
3 integrate with order entry inventory management
4 systems, don't you?

5 A No, I don't. I know it had an interface
6 capability, but no, I don't recall that.

7 Q Let's go back to Defendant's Exhibit 107. And go
8 to the last page of Defendant's Exhibit 107. This is
9 the Technical Viewer/2 brochure.

10 And the third bullet point on the left, if we
11 could blow that one specifically up.

12 MR. ROBERTSON: Your Honor, I object.
13 There's no foundation this witness even recalled this
14 at the time, and he testified that he didn't recall it
15 except that he was shown it later on at some point
16 during the enforcement actions in this case.

17 MR. McDONALD: The third bullet point, it's
18 specific to this language in column 2.

19 MR. ROBERTSON: It's outside the scope of my
20 direct. I didn't ask the witness any questions about
21 this document.

22 MR. McDONALD: He asked him about whether
23 there were systems that could interact with the
24 requisition purchasing system that he knew of.

25 MR. ROBERTSON: I asked if that statement was

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2154

1 truthful, not anything about this document.

2 THE COURT: Objection is sustained.

3 BY MR. McDONALD:

4 Q Let's go back to column 2 of the '683 patent and
5 pick up where we left off there. I think that would
6 be at column 2, line 18. The next sentence.

7 You were asked about this sentence that says, Thus
8 it would be desirable to provide an electronic
9 sourcing system that provides a means for transferring
10 information between a requisition purchasing system
11 that may use the results of a search of product
12 information and a means for searching large volumes of
13 product information such as would be included in a
14 vendor product catalog or catalogs, right, Mr. Momyer?

15 A Yes.

16 Q Isn't it true that the TV/2 system was already a
17 system that provided a means for transferring
18 information between a requisition purchasing system
19 that may use the results of a search of product
20 information and a means for searching large volumes of
21 products' information such as would be included in a
22 vendor product catalog or catalogs?

23 A It did have a means for transferring information.
24 That's the reason that we selected it is that we could
25 take advantage of that and customize it to meet our

MOMYER - REDIRECT

2155

1 requirements.

2 Q And TV/2 also had the means for searching through
3 large volumes of product information, right?

4 A To an extent. There were some changes we had to
5 make to allow us to have multiple catalogs.

6 Q That was one of the features that the TV/2 system
7 touted by IBM to Fisher, specifically the feature of
8 searching large volumes of product information?

9 MR. ROBERTSON: Objection. Lacks foundation.
10 It calls for hearsay as well.

11 THE COURT: Overruled.

12 A They did say they could search large volumes of
13 information, yes.

14 Q Let's go to the next sentence. I think we have
15 already covered this one, Mr. Momyer, in a little
16 different form, but let's just take a look at it here.
17 Do you see this sentence, also one Mr. Robertson asked
18 you about, "It would also be desirable to provide an
19 electronic sourcing system that is capable of
20 searching a database containing at least two vendor
21 product catalogs for product information." Do you see
22 that?

23 A Yes, I do.

24 Q Isn't it true that the TV/2 system already had the
25 capability of searching a database containing at least

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2156

1 two vendor product catalogs for product information
2 before Fisher even started working with IBM?

3 A Not that I understood. That's some of the reason
4 we did the development we did, to allow us to provide
5 for multiple catalogs.

6 Q Do you know one way or the other whether the TV/2
7 system had that capability?

8 MR. ROBERTSON: Objection.

9 THE COURT: He use answered it. He said it
10 did not to his knowledge.

11 MR. McDONALD: I just want to clarify.

12 THE COURT: I want you to move on. He
13 answered. Let's go on.

14 Q Let's go to the next sentence. I think this is
15 basically repetitive of what we have already talked
16 about. So we won't go through this one in detail.
17 Let's go to the next sentence after this.

18 You were also asked about this one regarding an
19 order list, right, Mr. Momyer?

20 A Yes.

21 Q Isn't it true that the TV/2 system as it existed
22 when Fisher started working with IBM had the
23 capability of generating a shopping list that could be
24 transferred to an order system?

25 A I think we've gone through this. I don't recall

MOMYER - REDIRECT

2157

1 that being a capability of the system.

2 Q Well, could you refer to -- could we refer to the
3 brochure, PX 107? I'll just ask you if this refreshes
4 your recollection, Mr. Momyer. The third page of
5 Exhibit 107, that third paragraph.

6 A DX?

7 Q 107. Does reviewing that paragraph refresh your
8 recollection as to whether or not the IBM TV/2 system
9 had the capability of creating a shopping list?

10 A This is the same document I said I did not see.
11 And the last time I recall seeing it -- the first I
12 recall seeing it was 2004 when we had the first case.

13 Q I'm just asking if it refreshes your recollection.
14 If it doesn't, it doesn't.

15 A No.

16 Q Now, you were asked whether the patents mention
17 the RIMS system. The patents involved in this suit,
18 the three alleged to be infringed here. Do your three
19 patents-in-suit also mention the TV/2 system several
20 times?

21 A I believe it does.

22 Q But in addition to that, the TV/2 system was
23 specifically disclosed to the Patent Office as
24 publications and listed on the cover page of the
25 patent in addition to being listed in the patent

MOMYER - REDIRECT

2158

1 itself, right?

2 MR. ROBERTSON: Objection. This was asked on
3 direct examination.

4 THE COURT: Already been there and he didn't
5 go into it. Exceeds the scope of cross. Sustained.

6 BY MR. McDONALD:

7 Q I think you were asked about the RIMS patent.
8 Could we turn to the RIMS patent, please, Plaintiff's
9 Exhibit 10? If we could turn to column 37.

10 A Column 37. All right.

11 Q There's that first table, No. 1, order header
12 information. Do you see that?

13 A Yes.

14 Q I want to make sure I have the right chart here,
15 Mr. Momyer. I want to just verify. But you were
16 asked whether a particular table did or did not
17 include a reference to a vendor. Do you recall that?

18 A Yes.

19 Q And that was in the RIMS patent, right?

20 A Yes.

21 Q Is this the right table that I've got here?

22 A This is the one that we talked about, yes.

23 MR. McDONALD: Could we back out to the full
24 page, column 37 and 38, and look at the table
25 immediately to the right of table 1, please. And blow

MOMYER - REDIRECT

2159

1 that up.

2 Q This is table 5 from the RIMS patent, right,
3 Mr. Momyer?

4 A Yes, it is.

5 Q Do you see about the 12th line down there, there's
6 a reference to vendor NVR colon and vendor name colon
7 next to that?

8 MR. ROBERTSON: I object. He's
9 mischaracterizing the table. It's entitled
10 "Non-catalog information. Can we --

11 MR. McDONALD: I didn't misidentify anything.

12 THE COURT: Well, he didn't ask about this,
13 about non-catalog information. So what's that got to
14 with it? What does it have to do with anything that
15 we're dealing with if we're asking about non-catalog
16 information?

17 MR. McDONALD: This is part of the RIMS
18 system, Your Honor, that's in the cross reference
19 tables that we have been talking about. That's what
20 this non-catalog information is for. These
21 cross-reference tables.

22 MR. ROBERTSON: I just asked about the
23 requisition header, Your Honor, table 1. No questions
24 about this. It has no relevance.

25 MR. McDONALD: I think it was implied that

MOMYER - REDIRECT

2160

1 the RIMS system didn't track vendor names or numbers,
2 and I just wanted to clarify that.

3 THE COURT: Overruled.

4 Q Do you see that reference, Mr. Momyer, to vendor
5 NVR and vendor name in table 5 of the RIMS patent?

6 A I do see that.

7 Q And the NVR, that would refer to a vendor number,
8 correct?

9 A What that was used for was --

10 Q Is it for a number?

11 A Yes.

12 THE COURT: He was just answering what it was
13 used for.

14 A What it's used for is the ability for dealing with
15 the product type 04s, which was, if you'll recall how
16 we talked about how that worked was, it was basically
17 some information that was sent up to the Fisher host
18 to basically print off a piece of paper for a customer
19 service person to enter an order into the Fisher
20 system to buy for the customer a product.

21 Q So that order would be placed at the host end of
22 the system, right?

23 A It would actually -- it would be placed manually.
24 Someone would actually key that information in. That
25 particular piece of information would get passed up in

MOMYER - REDIRECT

2161

1 the data block that RIMS would send up. As it was
2 going through and building the order, it would create
3 for all that information, basically put that
4 information on a paper document, and would print it
5 off as a procurement area within Fisher, who would
6 then look at the piece of paper, and then proceed to
7 enter an order with the supplier that was requested.

8 Q Did you consider that incentive to take that piece
9 of paper and simply load it onto a computer
10 electronically?

11 A No.

12 Q So this table 5 is called non-catalog information,
13 right?

14 A Yes.

15 Q And that relates to the information that's tracked
16 in those cross reference tables, right?

17 A It can do a look-up on them, yes.

18 Q If we go to table No. 17 on column 43 of the '989
19 patent --

20 MR. ROBERTSON: I'm going the object now,
21 Your Honor. This is far outside the scope.

22 MR. McDONALD: This is just closing the loop
23 on the vendor numbers on the cross-reference table.

24 MR. ROBERTSON: I didn't ask anything about
25 those tables with respect to that, Your Honor.

MOMYER - REDIRECT

2162

1 THE COURT: Can I see the table?

2 MR. McDONALD: The table is 17 in column 43.
3 Can you blow that up, please.

4 THE COURT: Overruled.

5 BY MR. McDONALD:

6 Q Do you have table 17 before you, Mr. Momyer?

7 A Yes, I do.

8 Q So this is the cross reference number list,
9 correct?

10 A Yes.

11 Q This does have columns for vendor number and
12 vendor, correct?

13 A It has columns for vendor, the vendor ID, and the
14 vendor part number, yes.

15 Q And so that's all in the RIMS system and the
16 tracking of the vendor number, right?

17 A Once, again, the cross reference, it's back to a
18 specific Fisher part number, that's correct.

19 MR. McDONALD: I have no further questions.

20 THE COURT: Can he be excused permanently or
21 do you need him further?

22 MR. ROBERTSON: He can be excused, Your
23 Honor.

24 THE COURT: Mr. McDonald?

25 MR. McDONALD: I'm done also, Your Honor.

MOMYER - REDIRECT

2163

1 THE COURT: Thank you very much for being
2 with us, Mr. Momyer. You're welcome to remain and
3 watch or you can go.

4 THE WITNESS: Thank you very much.

5 (The witness was excused from the witness
6 stand.)

7 THE COURT: Who's next?

8 MR. McDONALD: We'll call Mr. Kinross next,
9 Your Honor.

10 THE COURT: Where is Mr. Kinross?

11 MR. ROBERTSON: He's making his way from the
12 witness room right now.

13 THE COURT: All right.

14

15 ROBERT KINROSS, called by the Defendant, first
16 being duly sworn, testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. McDONALD:

20 Q Would you state your full name, please?

21 A Robert Kinross.

22 Q And you've already testified once here, right,
23 Mr. Kinross?

24 A Yes.

25 Q I'd like to start by talking to you about two

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2164

1 documents that relate to the Technical Viewer/2
2 system. The first one is Defendant's Exhibit 105.
3 Can we put that up on the screen.

4 It's IBM Technical Viewer/2 General Information
5 Manual. This is a document that you obtained before
6 Fisher developed the system that resulted in the
7 filing for the patents involved in this, suit correct?

8 MR. ROBERTSON: I apologize, but the book you
9 have handed me --

10 THE COURT: It would be in No. 1.

11 MR. ROBERTSON: It's not in this document.

12 THE COURT: Defendant's Exhibit 105. It's in
13 the first volume.

14 MR. ROBERTSON: I have one now, Your Honor.
15 Thank you.

16 BY MR. McDONALD:

17 Q So, Mr. Kinross, let me start over again with
18 Exhibit 105. This is an IBM Technical Viewer/2
19 General Information Manual, correct?

20 A Correct.

21 Q Is that a document that you obtained before Fisher
22 developed the system that it filed these patents on
23 that are involved in this case?

24 A Yes.

25 Q And IBM gave you a copy of that document at the

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2165

1 beginning, right?

2 A I can't tell you exactly when I received this. I
3 do know that I had it in my possession during the
4 development of the system.

5 Q So it's fair to say you got it before the system
6 was actually developed, right?

7 A No, I don't recall that being the case.

8 Q Do you have a binder of depositions up there or
9 actually I think it's Volume I. There's a big book
10 there with all the deposition transcripts.

11 THE COURT: The only ones that are in my
12 notebook are Momyer. Is it in Volume II? It's not in
13 these documents.

14 MR. McDONALD: I'm sorry, Your Honor. You're
15 right about that. I have a volume of transcripts
16 here. At this moment I don't have the multiple copies
17 of it. Can I just show him the one copy I have right
18 now or do you want me to move on?

19 THE COURT: Mr. Langford, I think he wants to
20 hand up his copy.

21 BY MR. McDONALD:

22 Q Let me get to the right page.

23 Mr. Kinross, you have been handed a copy of your
24 December 2, 2009 deposition transcript opened up to
25 page 119. You do remember giving the deposition under

KINROSS - DIRECT

2166

1 oath in this case in December of '09, right?

2 A Yes.

3 Q Can you direct your attention there to between
4 lines 12 and 17 where you were shown an exhibit called
5 the IBM Technical Viewer General Information Manual?

6 A Yes.

7 Q Do you see there after the reference to the
8 copyright 1991 date, you're asked if you'd continue to
9 page 120 at line 3. "Was this a document that you
10 obtained before you developed the system that you
11 filed the patents on?" And your answer was, "Yes,"
12 right?

13 A That's correct.

14 Q Let's turn now to the --

15 THE COURT: Mr. McDonald, he said he got it
16 during the development of the system and before it was
17 developed. So why is that impeaching?

18 MR. McDONALD: I thought he said he got it
19 during the development and not before.

20 THE COURT: He did. But during presupposes
21 that there is a continuum of it. That kind of stuff
22 doesn't help out a whole lot.

23 BY MR. McDONALD:

24 Q Let's turn to Exhibit 107, the Technical Viewer/2
25 brochure. Is it your understanding that this brochure

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2167

1 predated the invention that you filed your patents on
2 for this case? Do you have Exhibit 107 before you?

3 THE COURT: It's in one of those big books
4 there. It's the one labeled -- what volume, is it?
5 It's Volume No. 1, and it's about the third or fourth
6 thing in. Do you see it? It has a tab on it that
7 says DX 107.

8 MR. LANGFORD: He's got it.

9 A This is the one that does not have a date,
10 correct?

11 Q Correct. But you agree, don't you, that that
12 brochure, that description of the IBM Technical
13 Viewer/2 product predated your invention that you
14 filed patents for?

15 A I can't say yes or no to that. I don't know when
16 this document was created.

17 Q You still have, I believe, your December 2009
18 deposition before you, correct?

19 A Yes.

20 Q Can you turn to page 106? Actually, I guess it
21 would start at the bottom of 105 at line 25. Turn to
22 page 105 first?

23 A All right.

24 Q Do you see there there's a reference to the
25 exhibit that's an IBM publication about Technical

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2168

1 Viewer/2, and then the question at the bottom of page
2 105 beginning at line 25, "Is it your understanding
3 that Exhibit 8 of the description of this IBM
4 Technical Viewer/2 product that predated your
5 invention that you filed patents for?" You answered
6 "Yes." Right?

7 A Well --

8 MR. ROBERTSON: Your Honor, may I just
9 object? Because there's another question in which the
10 witness clarifies his answer right then and there, I
11 think.

12 THE COURT: Read it.

13 A These documents --

14 THE COURT: Read it, Mr. McDonald.

15 MR. McDONALD: I don't have it right in front
16 of me, but the witness can read it.

17 THE COURT: Can you read what follows, the
18 next thing it says, please, sir?

19 THE WITNESS: Yeah. "Had you seen this
20 brochure before you actually developed your
21 invention?"

22 "Answer: I can't recall the exact time I saw
23 this brochure."

24 "Did you see it sometime before you filed
25 your patent?"

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2169

1 "I would say yes."

2 Do you want me to go on?

3 Q I think that's enough.

4 A That's what I recall.

5 Q Now, is it true, Mr. Kinross, that at least
6 initially in IBM's work with Fisher on this project
7 leading to the patents in this suit, that IBM worked
8 from a paper catalog of Fisher?

9 A My understanding of that is they had access to the
10 Fisher paper catalog as did hundreds of thousands of
11 other people in the United States. We distributed
12 that freely to customers. When we first met with IBM,
13 they had taken the first four pages of that catalog,
14 paper catalog, and re-created that in technical viewer
15 to show us how a search would operate on catalog
16 content.

17 Q So this was just kind of a pilot demo just with
18 four pages?

19 A Yes.

20 Q But the four pages, was there an effort to
21 reproduce the pages just like they were in a those
22 four pages of the Fisher paper catalog; is that right?

23 A Not exactly, no. The pages in the Fisher paper
24 catalog had X number of products on them, each of
25 which became what technical viewer termed a topic.

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2170

1 So, for example, if a laboratory suit was depicted
2 and had a description about a Tyvek laboratory suit,
3 and a product number and a price in the catalog. That
4 would become one entity in Technical Viewer.

5 Q So that one entity in Technical Viewer would
6 reproduce the information from that one product
7 description in the paper catalog?

8 A Yes, but it wouldn't be the page. This was a
9 subset of the page.

10 Q This was for demo purposes, they were just doing
11 certain ones of the products on the page; is that
12 right?

13 A Could you state that again?

14 Q This was for demonstration purposes, this first
15 one with just the four pages. So they were just
16 picking some specific items that they were re-creating
17 to show you their product could work the way you
18 wanted to, right?

19 A They I think picked those pages to show how
20 Technical Viewer could display information on a screen
21 rather than a printed page.

22 Q Was the ultimate goal at the end of the project,
23 though, that the Technical Viewer/2 system could
24 re-create the entirety of the pages of the Fisher
25 catalog in the system?

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2171

1 A No. Well, you need to define entirety of the
2 page.

3 Q I guess the entirety of the product descriptions
4 and drawings or pictures.

5 A Yes.

6 Q Okay. And at some point in the process -- well
7 let's, back up a moment. Fisher had worked with a
8 company called SteBo. Did I pronounce that right?

9 A That's correct, yes.

10 Q SteBo created an electronic version of the Fisher
11 paper catalog; is that right?

12 A It was an electronic format that the paper catalog
13 was used to provide the publisher information to
14 print. So it was it an electronic catalog? Probably
15 not, but it was an electronic form of the catalog that
16 the publisher's system could understand so that it
17 could format pages.

18 Q Was SteBo the publisher or did somebody else
19 actually publish the paper version?

20 A Someone else. Donnelly was the Publisher.

21 Q SteBo would provide Donnelly then with an
22 electronically formatted file; is that right?

23 A Yes.

24 Q An Donnelly would receive that file and generate
25 the paper catalogs from that electronic file?

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2172

1 A Yes.

2 Q So what SteBo did represented completely what the
3 paper catalog looked like, right?

4 A Well, for the most part, yes. There were sections
5 of the catalog that SteBo did not do, and we had a
6 creative services division of Fisher that was
7 responsible for producing the paper catalog, and they
8 would use other software to create certain other
9 pages. And then they would just give them to the
10 Donnelly publisher for publication. So they didn't
11 have a complete catalog, but they had the majority of
12 it.

13 Q They had many tens of thousands of pages of a
14 catalog; is that correct?

15 A No, the catalog was 2000 pages total.

16 Q So SteBo had the vast majority of those 2000
17 pages?

18 A Probably 90 percent or more, yes.

19 Q At some point when Fisher was working with IBM,
20 did Fisher send that SteBo electronic file to IBM to
21 work with?

22 A Yes.

23 Q Did IBM take that electronic file that
24 corresponded to the paper catalog and load that into
25 the TV/2 system?

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2173

1 A Yes. It didn't go as smoothly as you're
2 portraying it, though. There was other work to be
3 done.

4 Q Okay. There were some step perhaps in changing
5 the markup language or kind of translating the
6 electronic files, right?

7 A Right. The images were a different matter. Also
8 the SteBo electronic text did not include the images.

9 Q So how did IBM get the images?

10 A I provided the images to IBM.

11 Q In what form did you provide them?

12 A They were called bit maps. BMP files. Each file
13 had a picture of the item, and then from the picture
14 we also created a smaller version called a thumbnail,
15 so that it would provide a more rapid response to the
16 end user by just displaying a thumbnail.

17 You see this all the time now with like Google
18 images. You just see a little thumbnail encapsulation
19 of the image. And if you click on it, you get the
20 entire image brought up.

21 Q Did IBM create the thumbnails?

22 A No, I did.

23 Q In that process of IBM taking that information
24 then and loading it into the TV/2, that took some
25 time?

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2174

1 A Yes.

2 Q That's because they had to translate the files
3 into a format that the TV/2 system understood them in,
4 correct?

5 A Which files are we talking about? The images,
6 they didn't have to do anything to the images.

7 Q So that answers that. How about for the text
8 file?

9 A For the text files, the conversion process wasn't
10 100 percent compatible depending on the accuracy of
11 your conversion program. So things either fell out of
12 the text because of programming lapses or the tables
13 were of particular importance in converting because
14 both the SteBo text and the IBM markup language
15 described how the data should look, not what it
16 actually is.

17 So in writing a program to work with data like
18 that, it would be much better if you knew what the
19 data was rather than how it looked. So they were
20 going on the basis of trying to interpret how the data
21 looked to come up with the conversion process, which
22 in the instance of tables because you have different
23 column headings and split headings, it became a fairly
24 complex programming task to sort those issues out and
25 create identical markup from SteBo to Technical

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2175

1 Viewer.

2 Q Did IBM do that through that process that you just
3 described?

4 A Did they do it? They tried to do it. I don't
5 think they were completely successful.

6 Q It was their job as part of the project, though,
7 to do that conversion?

8 A Yes. And what their programs couldn't do, they do
9 manually.

10 Q So one way or the other they got it into their
11 system?

12 A Yes.

13 Q Ands that's part of what Fisher paid them for,
14 correct?

15 A Right.

16 Q And that IBM system as it existed when Fisher
17 first started working with IBM, it did have the
18 ability to do keyword searches, right?

19 A Correct.

20 Q It had the ability to search a document, a
21 complete document, or a list of selected topics,
22 right?

23 A I don't think the list of selected topics was part
24 of it.

25 Q Could you turn to Defendant's Exhibit 105, please,

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2176

1 to the seventh page of the document, please?

2 A All right. These aren't numbered the same way.

3 Q The lower corner --

4 A Mine is numbered 230.

5 Q Do you have an IBM Technical Viewer/2 Manual?

6 A Yeah, it's numbered DX 230 in my book.

7 Q Just turn to the seventh page of that document

8 where it has the heading features of IBM Technical

9 Viewer/2 just down seven pages.

10 THE COURT: The even numbered pages are
11 missing out of my copy. What are you on? Seven? I
12 have seven, but I don't have the even numbered pages.

13 MR. McDONALD: This is Exhibit DX 105. You
14 say you're missing some pages, Your Honor?

15 THE COURT: Mine goes from 3 to 5 to 7 to 9.

16 MR. McDONALD: Okay. This is actually the
17 document that's filed with the Patent Office. It had
18 missing pages from the document. I think there's
19 another version of it.

20 BY MR. McDONALD:

21 Q Exhibit 230 is the complete version. Do you have
22 that, Mr. Kinross?

23 A Yes.

24 Q So let's turn to the page --

25 THE COURT: What volume is 230 in?

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2177

1 MR. McDONALD: It should be in the same
2 volume as 107.

3 Q Mr. Kinross, have you seen that version that we
4 were first looking at there that was actually missing
5 some of the pages of this technical bulletin?

6 THE COURT: Do you have a document called 230
7 over there?

8 THE WITNESS: Yes, I do.

9 MR. McDONALD: You don't have 230?

10 THE WITNESS: I very 230.

11 THE COURT: Well, it's more important you
12 have it than I have it.

13 THE WITNESS: It has blank pages in it. Page
14 18 is completely blank.

15 THE COURT: He doesn't have a complete copy.

16 MR. McDONALD: I think he said he just has
17 some blank pages because it has both sides copied and
18 includes some of those missing pages from the other
19 one.

20 BY MR. McDONALD:

21 Q If you could turn to the 12th page of that
22 document, Mr. Kinross.

23 A Page 12 is just the IBM Technical Viewer general
24 information cover.

25 Q What's the number in the lower right corner on

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2178

1 page 1 of the document?

2 A The lower right, G0000012.

3 Q Can you turn to G23, please? Now, if we blow up
4 the search capability here, about the third one down.

5 A Yes.

6 Q This is the 1991 IBM document, right, Mr. Kinross?
7 Do you see that in the lower left part of that same
8 page?

9 A Yes.

10 Q So we have now blown up this search function here
11 where it talks about "A search facility that can
12 locate every occurrence of a word or phrase in either
13 the current topic, a list of selected topics, the
14 complete document, or another document." Do you see
15 that sentence?

16 A Yes.

17 Q Now, isn't it true that the IBM Technical Viewer/2
18 product had that search facility as described there
19 before Fisher started working with IBM?

20 A I can't say I saw a list of selected topics in the
21 Technical Viewer search program that I looked at
22 initially.

23 Q Were you looking for that ability to search
24 selected topics initially?

25 A Yes.

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2179

1 Q What did you actually see?

2 A Well, when you brought Technical Viewer up, it
3 would have the content that could be searched. If you
4 did a search, it would search that content.

5 Q Did it give you a menu of things you could search
6 through such as part catalogs or other types of
7 documents?

8 A No.

9 Q Did you ever see a demo of the Volvo parts system?

10 A No, I didn't. There are other things in this
11 manual that in my opinion did not exist in the product
12 as well.

13 Q If we go farther down in the same page, do you see
14 near the bottom of the page it talks about Windows?

15 A Yes, sir.

16 Q That's a graphic user interface, correct, as used
17 there?

18 A Right.

19 Q Did the IBM Technical Viewer/2 as you first saw it
20 have that Windows graphical user interface?

21 A Well, Windows to me is the windows we all know
22 from Microsoft which IBM also had as its OS/2 version.
23 So a Window would -- my definition of this is just a
24 portion of the screen that can be manipulated,
25 resized, just like Windows is today.

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2180

1 Q You'd consider that a graphical user interface,
2 right?

3 A Yes.

4 Q Isn't true that the TV/2 system could search
5 either data on a CD ROM or data saved on the hard
6 drive of the TV/2 computer system?

7 A Yes.

8 Q That was before Fisher started working with IBM
9 that the TV/2 had that capability, right?

10 A It was just a matter of where the data was placed.

11 Q So you're agreeing with me that it had that
12 capability?

13 A Yes, I'm agreeing with you.

14 Q It's IBM that actually programmed the search
15 engine capability for TV/2, not anybody from Fisher,
16 right?

17 A Yes, IBM programmed the search in Technical
18 Viewer, right.

19 THE COURT: How much longer do you with the
20 witness, Mr. McDonald?

21 MR. McDONALD: I'd say maybe about a half
22 hour, Your Honor.

23 THE COURT: I think this is a good place to
24 break for lunch.

25 They're going out today.

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2181

1 THE CLERK: They are going to go downstairs.

2 THE COURT: Just leave your notebooks with

3 Mr. Neal. He'll watch them for you.

4 (The jury is exiting the courtroom.)

5 THE COURT: When is Mr. Gounaris due up?

6 MR. McDONALD: After Mr. Kinross.

7 THE COURT: Be ready to argue this motion

8 then when we come back from lunch.

9 All right. We'll be in recess for one hour.

10 (Luncheon recess taken.)

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